

# HOUSE . . . . . No. 3424

By Mr. Peterson of Grafton, petition of George N. Peterson, Jr., and Paul K. Frost relative to state agency compensation for owners of private property taken by eminent domain for regulatory purposes. Bonding, Capital Expenditures and State Assets.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT TO COMPENSATE THE OWNERS OF PRIVATE PROPERTY FOR THE EFFECTS OF CERTAIN REGULATORY RESTRICTIONS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 21A of the General Laws, as appearing in the 2002  
2 Official Edition, is hereby amended by adding at the end the  
3 following new section:—

4 Section 21. (1) A portion or parcel of private property shall be  
5 considered to have been taken for general public use when;

6 (a) the Commonwealth, its agencies, departments or any polit-  
7 ical subdivisions thereof regulates or imposes a restraint of land  
8 use on such portion or parcel of property for public benefit; and

9 (b) no public nuisance will be created absent regulation.

10 (2) When private property is taken for general use, the regula-  
11 tion agency, department or Commonwealth shall pay full compen-  
12 sation of reduction in value to the owner, or the use of the land by  
13 the owner may not be restricted because of the regulation or  
14 restraint. The Commonwealth may not require waiving this com-  
15 pensation as a condition of approval of use of another permit, nor  
16 as a condition for subdivision of land.

17 (3) Compensation must be paid to the owner of a private prop-  
18 erty within three months of the adoption of a regulation or  
19 restraint which results in a taking for general public use.

20 (4) The Commonwealth, its agencies, departments or any polit-  
21 ical subdivisions thereof may not deflate the value of property by

22 suggesting or threatening a designation to avoid full compensation  
23 to the owner.

24 (5) The Commonwealth, its agencies, departments or any polit-  
25 ical subdivisions thereof that places restrictions on the use of  
26 public or private property which deprives a landowner of access to  
27 his or her property must also provide alternative access to the  
28 property at the governmental entity's expense, or purchase the  
29 inaccessible property.

30 (6) The assessor shall adjust property valuation for tax purposes  
31 and notify the owner of the new tax valuation, which must be  
32 reflected and identified in the next tax assessment notice.

33 (7) The Commonwealth is responsible for the compensation lia-  
34 bility of the other governmental entities for any action which  
35 restricts the use of property when such action is mandated by state  
36 law or any state agency.

37 (8) Claims for compensation as a result of a taking of private  
38 property under this act must be brought not later than 180 days  
39 after the adoption of a regulation or restraint which results in a  
40 taking for general public use.

41 (9) The following words and phrases as used in this section,  
42 unless the context otherwise requires, shall have the following  
43 meanings:

44 "Full compensation", means the reduction in the fair market  
45 value of the portion or parcel of property taken for general public  
46 use which is attributable to the regulation or restraint. Such reduc-  
47 tion shall be measured as of the date of adoption of the regulation  
48 or imposition of restraint on the use of private property.

49 "Private property", means:

50 (a) land;

51 (b) any interest in land or improvements thereon;

52 (c) any proprietary water right.

53 "Restraint of land use", means any action, requirement, or  
54 restriction by a governmental entity, other than actions to prevent  
55 or abate public nuisances, that limits the use or development of  
56 private property.

57 (10) This act may be enforced in Superior Court against any  
58 governmental entity which fails to comply with the provisions of  
59 this section by an owner of property subject to the jurisdiction of

60 such entity. Any prevailing plaintiff is entitled to recover the costs  
61 of litigation, including reasonable attorney's fees.

62 (11) This section shall apply to all state regulations that were  
63 promulgated and in effect from January 1, 2002, and after.